



DAN MORALES  
ATTORNEY GENERAL

Office of the Attorney General  
State of Texas

February 27, 1991

Mr. David M. Douglas  
Assistant Chief, Legal Services  
Texas Department of Public Safety  
Box 4087  
Austin, Texas 78773-0001

OR91-098

Dear Mr. Douglas:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 11509.

The Texas Department of Public Safety (the department) received an open records request for, inter alia, the Internal Affairs and Texas Ranger investigations of the death of Andrew Jackson Spruill. You contend that the requested information comes under the protection of sections 3(a)(3) and 3(a)(11) of the Open Records Act.

You state that a civil trial that stemmed from the death has ended and that the jury found in favor of defendants, including a DPS trooper and certain Frio County officials. The plaintiffs have now given notice of appeal with regard to the county officials but not with regard to the state trooper. You contend that because of the pending appeal, the department may withhold the investigative reports pursuant to section 3(a)(3), despite the fact that the DPS trooper is no longer a party to that litigation. This aspect of your request is governed by Open Records Decision No. 132 (1976), a copy of which is enclosed. In order for a governmental body to claim the protection of section 3(a)(3), it must be a party to pending or reasonably anticipated litigation; a governmental body may not raise section 3(a)(3) on behalf of another. Because litigation is no longer pending against the department for purposes of section 3(a)(3), this exception is inapplicable in this instance.

Section 3(a)(11) of the act excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the deliberative process. Open Records Decision No. 464 (1987). You may withhold those portions of the reports that you have marked as coming under the protection of section 3(a)(11). The remainder of the reports must, however, be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-098.

Yours very truly,



Celeste Baker  
Assistant Attorney General  
Opinion Committee

CAB/RWP/lcd

Ref.: ID# 11509

Enclosures: Open Records Decision No. 132, 464  
Submitted documents

cc: Mr. William S. Helfand  
Attorney  
Hirsch, Glover, Robinson & Sheiness  
917 Franklin  
Houston, Texas 77002-1779

Mr. Dan Malone  
Staff Writer  
The Dallas Morning News  
Communications Center  
Dallas, Texas 75265